

1910 SAFE-PLACE STATUTE: PLACE OF EMPLOYMENT: BUSINESS

To be a place of employment, two things must concur:

First, a place where industry, trade, or business is carried on;

Second, an employment of another for the employer's gain or profit.

The ownership of a (parking lot) (apartment building) (house), and the keeping of the same in repair and renting, does not in and of itself constitute a business; but such transactions may amount to a business within the meaning of the statute if they are carried on to such extent as to require a substantial and habitual application of time and labor in the management and operation of the same.

You will determine from the evidence whether the defendant was conducting a business in the management and operation of the (parking lot) (apartment building) (house) or whether it was only an investment in rental property.

COMMENT

The instruction and comment were initially approved by the Committee in 1963. The instruction was revised in 1986. The comment was updated in 1990.

Wis. Stat. § 101.01(1) (1961); Padley v. Lodi, 233 Wis. 661, 290 N.W. 136 (1940); Cross v. Leuenberger, 267 Wis. 232, 65 N.W.2d 35 (1954); Frión v. Coren, 13 Wis.2d 300, 108 N.W.2d 563 (1960); Waldman v. Young Men's Christian Ass'n, 227 Wis. 43, 46, 277 N.W. 632 (1938); Werner v. Gimbel Bros., 8 Wis.2d 491, 99 N.W.2d 708, 100 N.W.2d 920 (1959); Schwenn v. Loraine Hotel Co., 14 Wis.2d 601, 608-09, 111 N.W.2d 495 (1961); Filipiak v. Plombon, 15 Wis.2d 484, 113 N.W.2d 365 (1962); Brueggeman v. Continental Casualty Co., 141 Wis.2d 406, 415 N.W.2d 531 (Ct. App. 1987); Schmorrow v. Sentry Ins. Co., 138 Wis.2d 31, 405 N.W.2d 672 (Ct. App. 1987).

The term "trade" means an occupation pursued as a business or calling for a livelihood or profit. A place of trade is a place devoted to the business of buying or selling or applying some mechanical vocation. Sharpe v. Hasey, 134 Wis. 618, 114 N.W. 1118 (1908).

The term "industry" means any department or branch of art, occupation, or business conducted for a livelihood or profit, and it applies especially to a distinct branch of trade in which labor and capital are extensively employed. 21 Words and Phrases, Industry 509 (1960, Supp. 1963).

The term "business" means some particular occupation or employment habitually engaged in for livelihood or profit. Vandervort v. Industrial Comm'n, 203 Wis. 362, 367, 234 N.W. 492 (1931); State v. Joe Must Go Club, 270 Wis. 108, 112, 113, 70 N.W.2d 681 (1955).